United Nations A/70/209

General Assembly

Distr.: General
29 July 2015

Original: English

Seventieth session
Item 29 (a) of the provisional agenda*
Advancement of women: advancement of women

Violence against women, its causes and consequences

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, in accordance with Assembly resolution 69/147.

* A/70/150.

15-12501 (E) 120815

Please recycle

Report of the Special Rapporteur on violence against women, its causes and consequences

Summary

In the present report, the Special Rapporteur provides an overview of the legally binding provisions, implementing mechanisms and relevant jurisprudence regarding violence against women in three regional human rights systems, namely, the African, European and inter-American systems. She also highlights that in order for the regional systems to reinforce universal human rights standards, as contained in international human rights instruments, a legally binding framework on violence against women and girls is essential within the United Nations system.

Contents

		Page
I.	Introduction	3
II.	Activities	3
	A. Country visits	3
	B. Reports to the Commission on the Status of Women and to the Human Rights Council	3
III.	Closing the gap in international human rights law: lessons from three regional human rights systems on legal standards and practices regarding violence against women	3
	A. Introduction	3
	B. United Nations resolutions and reports on regional cooperation	4
	C. African human rights system	4
	D. European human rights system	9
	E. Inter-American human rights system	14
IV.	Conclusions and recommendations	20

I. Introduction

1. The Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, submits the present report pursuant to General Assembly resolution 69/147. The activities of the Special Rapporteur since her previous report to the Assembly (A/69/368), up to July 2015, are summarized in section II. The existing legal standards and practices regarding violence against women in three regional human rights systems are discussed in section III. The discussions and activities being undertaken by civil society regarding the normative gap in international human rights law are highlighted in an addendum to the report of the Special Rapporteur to the Human Rights Council (A/HRC/29/27/Add.5).

II. Activities

A. Country visits

2. The Special Rapporteur visited the United Kingdom of Great Britain and Northern Ireland from 31 March to 15 April 2014 (A/HRC/29/27/Add.2), Honduras from 1 to 8 July 2014 (A/HRC/29/27/Add.1), Afghanistan from 4 to 12 November 2014 (A/HRC/29/27/Add.3) and the Sudan from 13 to 24 May 2015. She thanks the Governments of those countries for their cooperation. She regrets that she had to cancel her visit to the occupied Palestinian territories in January 2015, owing to her inability to obtain a visa. The visit to South Africa was postponed at the request of the Government and, owing to the lack of confirmation on the new dates that she proposed, the Special Rapporteur had to cancel her visit. She thanks the Government of Israel for recently accepting her request, sent in 2012, for a visit.

B. Reports to the Commission on the Status of Women and to the Human Rights Council

3. In March 2015, the Special Rapporteur participated in the fifty-ninth session of the Commission on the Status of Women. She presented an oral statement on her activities and convened a side event on the continuing and new challenges in the quest to eliminate violence against women.

4. In June 2015, the Special Rapporteur submitted her sixth thematic report to the Human Rights Council (A/HRC/29/27). The present report builds on that thematic report.

III. Closing the gap in international human rights law: lessons from three regional human rights systems on legal standards and practices regarding violence against women

A. Introduction

5. The present section provides an overview of the norms and standards, implementing mechanisms and relevant jurisprudence regarding violence against women in the African, European and inter-American regional human rights systems.

The Special Rapporteur attempts to provide guidance that may be helpful for the international human rights system to consider when addressing the normative gap. She also reinforces the view, articulated in previous reports by the Special Rapporteur, that in order for the regional systems to reinforce universal human rights standards, as contained in international human rights instruments, it is essential that the United Nations system adopt a legally binding framework on violence against women and girls.

B. United Nations resolutions and reports on regional cooperation

6. Both the General Assembly and the Human Rights Council have adopted resolutions on the broad theme "Regional arrangements for the promotion and protection of human rights".[1] In paragraph 5 (h) of its resolution 60/251 of 15 March 2006, the Assembly specifically stated that the Council should, inter alia, work in close cooperation in the field of human rights with Governments, regional organizations, national human rights institutions and civil society. In its resolution 12/15, adopted in 2009, the Council reaffirmed the fact that regional arrangements (mechanisms) played an important role in promoting and protecting human rights and that they should reinforce universal human rights standards, as contained in international human rights instruments.

7. In subsequent resolutions, the Human Rights Council has called upon the United Nations High Commissioner for Human Rights to convene workshops for the exchange of views on good practices; discuss the added value of and challenges for regional arrangements; and enhance cooperation between international and regional mechanisms, including through the establishment of focal points in the United Nations and regional human rights mechanisms, among others. Reports of the Office of the United Nations High Commissioner for Human Rights (A/HRC/15/56 and Corr.1), the High Commissioner (A/HRC/23/18 and A/HRC/28/31) and the Secretary-General (A/65/369) highlight a range of issues, including the continued relevance of international standards for legislation and policies in the various regions; the creation of synergies among the international and regional mechanisms, including in the promotion of and follow-up to the recommendations of each system; and discussions on how to close the human rights protection gaps that currently exist.

C. African human rights system

8. The Organization of African Unity (OAU), which was replaced by the African Union in 2002, was established in 1963. The charter creating OAU made no reference to human rights, given that the main issue on the agenda was to end colonialism and assert the right to self-determination of African States.[2] The creation of the African human rights system in 1981 led to the adoption of several human rights instruments and the setting up of monitoring mechanisms.

---

[1] See, among others, General Assembly resolution 63/170 and Human Rights Council resolutions 6/20, 12/15, 18/14 and 24/19.

[2] See the Charter of the Organization of African Unity, in particular articles II and III.

9. Human rights instruments that have been adopted include the African Charter on Human and Peoples' Rights, the Convention Governing the Specific Aspects of Refugee Problems in Africa, the African Charter on the Rights and Welfare of the Child, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa and the Protocol on the Statute of the African Court of Justice and Human Rights. The African human rights system is also referred to in the treaties of the subregional economic and political communities in Africa. Owing to space constraints, those subregional systems are not discussed in the present report.

10. Monitoring bodies include the African Commission on Human and Peoples' Rights, which monitors the implementation by States of their obligations as set out in, among others, the African Charter on Human and Peoples' Rights and its Protocol on the Rights of Women in Africa, and the African Committee of Experts on the Rights and Welfare of the Child, which monitors the implementation of the African Charter on the Rights and Welfare of the Child. The Commission has the mandate to receive and examine State party reports, consider communications and fulfil other protective and promotional responsibilities.[3]

11. In the African Charter on Human and Peoples' Rights, the member States stress the interdependence of rights and introduce unique features, such as the protection of community and group rights, and the imposition of duties on individuals. The Charter was the first human rights instrument to entrench the right to development. Specific references to women are included in the Charter, for example, in article 2, which prohibits discrimination, including on the basis of sex, and article 18 (3), which obliges States to eliminate all discrimination against women and to ensure the protection of the rights of women as stipulated in international declarations and conventions. The Charter incorporates principles related to culture, group rights and respect for the family environment. Article 60 of the Charter mandates the African Commission to draw inspiration from international law in its promotion and protection of human rights. Some scholars have argued that despite having minimal provisions on the rights of women, the Charter by inference imposes a duty on member States to abide by international human rights standards on women's rights.[4] The Charter has been criticized by some for being unrealistic and overambitious and for ignoring women's human rights, while others have praised it for protecting all human rights, both individual and collective.[5]

12. Concrete efforts to lobby for a specific instrument on women's rights began in 1995, largely led by non-governmental organizations working in the field of women's rights. The first Special Rapporteur on Rights of Women in Africa was appointed in 1999; she supported the efforts of non-governmental organizations to develop a protocol to the African Charter on Human and Peoples' Rights on the rights of women. A minimalist approach was adopted by member States in addressing the inadequacies of the Charter. The agreement was to adopt a protocol, as opposed to a separate treaty with its own monitoring body. During the negotiations, certain draft provisions were contentious, for example, those on polygamy, harmful traditional practices, sexual orientation as a prohibited ground

[3] See articles 30, 45 and 47 of the African Charter on Human and Peoples' Rights.

[4] Frans Viljoen, *International Human Rights Law in Africa* (Oxford University Press, 2007).

[5] Ebow Bondzie-Simpson, "A critique of the African Charter on Human and Peoples' Rights", *Howard Law Journal*, vol. 31 (1988).

for discrimination, and women's right to control their fertility.[6] The draft protocol was finalized by a team of government experts and adopted by the Assembly of the African Union in July 2003. It entered into force in 2005.

13. Article 2 of the Protocol requires States to take positive action to address inequalities between women and men in State efforts to ensure that women enjoy their rights. Other articles set out obligations with respect to, among other things, the right to dignity; the right to life, integrity and security of the person; protection from harmful practices; rights in marriage, which include entitlement to property and the custody and guardianship of children; protection from early and forced marriages; the right of access to justice and equal protection of the law; the right to participate in political and decision-making processes; the right to peace; the rights to adequate housing, food security, education and equality in access to employment; reproductive and health rights, including control of one's fertility; and the right to be protected against HIV infection. The Protocol also includes specific provisions on the protection of rights of women with disabilities. All promotional and protective provisions in the African Charter on Human and Peoples' Rights and other human rights instruments are equally applicable in the interpretation of the Protocol.[4]

14. The Protocol includes provisions on violence against women, based largely on the Declaration on the Elimination of Violence against Women, but with additions that are both context-specific and progressive. Article 1 of the Protocol provides a broad definition of violence against women, which includes explicit reference to the deprivation of fundamental freedoms in private or public life, and defines harmful practices as all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity. Article 4 is comprehensive with regard to the legal and non-legal measures to be taken by member States in addressing violence against women, including the enactment of specific legislation; the imposition of appropriate sanctions/punishment when violence occurs; the provision of adequate budgetary resources; the adoption of public education and awareness-raising measures, including to address negative elements in attitudes, traditions and culture in order to eliminate harmful cultural and traditional practices; and the provision of relevant services, including justice, health care and shelters.

15. Importantly, in the preamble of the Protocol it is made explicit that positive African values are based on the principles of equality, freedom, dignity, justice, solidarity and democracy. This clarification is important in the area of violence against women, as research indicates that violence, including wife-beating, is considered or perceived to be one of the values of African families in some societies.[7]

16. A seminal development is the inclusion in the Protocol of provisions on abortion, the first time such provisions have been included in an international or regional human rights instrument. Article 14 (2) (c) addresses the issue of medical abortion, stating that all appropriate measures must be taken to protect the

[6] Rachel Rebouché, "Health and reproductive rights in the Protocol to the African Charter: competing influences and unsettling questions", *Washington and Lee Journal of Civil Rights and Social Justice*, vol. 16 (2009).

[7] Alice Armstrong, *Culture and Choice: Lessons from Survivors of Gender Violence in Zimbabwe* (Southern African Research and Documentation Centre, 1998).

reproductive health of women, including through the authorization of abortions in cases of sexual assault, rape and incest, and where the continued pregnancy endangers the mental and physical health of the mother. This provision is crucial, considering the high maternal mortality rates linked to the practice of unsafe abortions. However, the cultural, religious and other moral arguments against the termination of pregnancies in many African countries challenge the effective realization of this right.

17. Article 14 (1) requires States to protect and promote the rights of women to be protected from sexually transmitted diseases, including HIV/AIDS, and to be informed of the HIV status of their partners. This provision is important in a context of high rates of HIV infection, and also considering the nexus between violence against women and HIV. Article 6 (c) of the Protocol references the issue of polygamy, a practice that is often linked to acts of violence against women.

18. The Protocol has been criticized on the basis, among others, that the language is too specific and narrow and that such language can deter States from ratifying the instrument; that the aspirational provisions create legal obligations that States cannot meet; and that it relies on Western ideas of women's rights, without determining how and if customary law will be considered in its implementation.[8] Another criticism is that in some aspects the Protocol is incoherent and fails to meet international standards.[6]

19. The African Charter on the Rights and Welfare of the Child makes reference to aspects of violence against girls, including early and forced marriages, child labour, abuse, torture, harmful social and cultural practices, the situation of children in armed conflict, sexual exploitation, and trafficking and abduction. While embracing African tradition and values, the Charter prohibits traditional practices and customs that are harmful to the child.[9]

20. The absence of a judicial enforcement mechanism within the African human rights system led to over four decades of civil society advocacy.[10] The creation of the African Court of Justice and Human Rights was provided for by the Protocol on the Statute of the African Court of Justice and Human Rights,[11] and entails merging the African Court of Justice and the African Court on Human and Peoples' Rights. The preamble of the Protocol indicates that the objective of the Court is to secure the rights contained in the African Charter on Human and Peoples' Rights, the African Charter on the Rights and Welfare of the Child, the Protocol on the Rights of Women in Africa and any other legal instrument relevant to human rights that States have ratified. Thus, the Protocol significantly expands the mandate of the Court beyond instruments found in the African human rights system. Unfortunately, only five States have ratified this Protocol, which requires 15 ratifications before the Court can come into existence. In the interim, the African Court on Human and Peoples' Rights, which was established in 1998, continues to hear cases.

---

[8] See Kirstin Davis, "The emperor is still naked: why the Protocol on the Rights of Women in Africa leaves women more exposed to discrimination", *Vanderbilt Journal of Transitional Law*, vol. 42, No. 3 (2009).

[9] See Rachel Murray, *Human Rights in Africa: From the OAU to the African Union* (Cambridge, United Kingdom, Cambridge University Press, 2004).

[10] Vincent O. Orlu Nmehielle, "Towards an African Court of Human Rights: Structuring and the Court", *Annual Survey of International and Comparative Law*, vol. 6, No. 1 (2000).

[11] Formally adopted at the African Union Summit in July 2008.

21. Article 45 of the African Charter on Human and People's Rights indirectly allows for the appointment of special rapporteurs, and rule 23 of the rules of procedure of the African Commission on Human and Peoples' Rights explicitly provides for the creation by the Commission of subsidiary mechanisms such as special rapporteurs. The mandate of the Special Rapporteur on Rights of Women in Africa was created in 1996 and the first mandate holder was appointed in 1999, from within the ranks of the Commission members. The office of the Special Rapporteur has faced serious challenges, since it does not receive an adequate budget from the Commission or support from the secretariat. [12] Despite the challenges, the Special Rapporteur has carried out promotional visits to numerous countries, and the issue of violence against women is an area of focus.

22. Article 62 of the Charter requires States parties to submit reports every two years. Reporting guidelines have been adopted; States are required to report on the general human rights situation as reflected in the African Charter and, in part VII of the Guidelines for national periodic reports of 1989, reporting requirements in relation to the elimination of all forms of discrimination against women are outlined. States are required to report on both legislative and other measures undertaken to empower women, as well as measures taken to remove obstacles to the participation of women in all aspects of life. The guidelines also require States parties to address in their reports each of the articles of Convention on the Elimination of All Forms of Discrimination against Women. Article 26 of the Protocol on the Rights of Women in Africa reiterates the obligation of States parties to include in their periodic reports information on measures taken to realize the rights of women as enshrined in the Protocol. Guidelines for reporting on the Protocol were adopted in 2010. Periodic reports submitted after the adoption of those guidelines reflect a lack of compliance with regard to reporting on the Protocol. However, during the consideration of reports, the African Commission on Human and Peoples' Rights raises questions on the rights of women and, in some concluding observations, refers specifically to the situation of women.

23. The communications procedure of the African Commission on Human and Peoples' Rights has not been widely used in dealing with women's rights in general and violence against women in particular. While in a number of decisions, the Commission has made reference to the protection of the rights of women, citing article 18 of the African Charter, this has mainly been by inference, rather than a specific decision on the human rights of women. The Commission has dealt with over 550 communications to date, but in only one case, *Egyptian Initiative for Personal Rights and INTERIGHTS v. Egypt* (communication No. 323/06), decided in 2011, have remedies for violations of the rights of women been specifically sought. In that case, the Commission considered allegations of incidents of gender-based violence by State authorities during political demonstrations and found violations of women's human rights under the African Charter, given that Egypt is not a party to the Protocol on the Rights of Women in Africa. The Commission ruled inadmissible *ratione temporis* the case of *Echaria v. Kenya* (communication No. 375/09), which concerned women's property rights on divorce, and declared admissible a case concerning rape brought by Equality Now against Ethiopia (communication No. 341/07).

[12] See Julia Harrington, "Special rapporteurs of the African Commission on Human and Peoples' Rights", *African Human Rights Law Journal*, vol. 1, No. 2 (2001).

24. The limited engagement of the communications procedure in the protection of women's rights is a source of concern. Some reasons for the limited engagement include the lack of, or limited, access to justice for women at the national levels, resulting in perceptions of similar weaknesses in the African regional system; the lack of knowledge on how to use the system; the inaccessibility of the communication system owing to the requirement in article 56 (5) of the African Charter regarding the exhaustion of local remedies before submitting allegations to the Commission; the relatively small number of women's rights organizations that interact with the regional human rights system; and the inadequacy of the provisions on women's rights in the Charter, which created barriers to using the regional system. The latter argument is now flawed, considering that the Protocol on the Rights of Women in Africa has been in force for almost a decade, yet usage of the procedure is still limited.

25. The role of national-level non-governmental organizations in submitting shadow reports is underused in the African human rights system. Few Africa-based women's rights non-governmental organizations are submitting such reports to the Commission. Possible explanations include the fact that the non-governmental organizations are more familiar with the United Nations system, compared with the African system, or that they have not seen the impact of the work of the Commission and therefore do not consider it an effective mechanism.

26. Despite the existence of the Charter on Human and Peoples' Rights and the Protocol on the Rights of Women in Africa, African States have been criticized for their human rights record generally, but also for their treatment of women's human rights specifically.[13] A number of challenges, such as resource constraints, delays in decision-making, a lack of knowledge, trust and political will, a lack of compliance with reporting obligations and a lack of cooperation with the regional human rights mechanisms, have resulted in the African system being perceived as ineffective in carrying out its mandate, including the promotional, protective and accountability aspects, regarding the human rights of women.

D. European human rights system

27. The Council of Europe Convention on preventing and combating violence against women and domestic violence was the second regional treaty adopted to specifically address violence against women.[14] The monitoring mechanism relevant to this treaty has recently been set up and, currently, there are no reports or jurisprudence that can be referred to in assessing efficacy.

28. The Council of Europe has substantial legislative powers, while the European Union, as the other major European political-legal body, has limited jurisdictional competence, including in issuing any laws in the area of violence against women.[15] The European Union has issued two directives regarding specific forms of violence

[13] Christof Heyns, "The African regional human rights system: In need of reform?", *African Human Rights Journal*, vol. 1, No. 2 (2001).

[14] The first was the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women of 1994.

[15] European Commission, *Feasibility Study to Assess the Possibilities, Opportunities and Needs to Standardise National Legislation on Violence against Women, Violence against Children and Sexual Orientation Violence* (Luxembourg, 2010).

that affect women disproportionately, namely, trafficking, and sexual harassment in the workplace. The Council of Europe has adopted two legally binding instruments: the Convention on Action against Trafficking in Human Beings and the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. Owing to space constraints, those instruments are not discussed in the present report.

29. Since the 1990s, the Council of Europe has adopted numerous measures and produced recommendations, indicators, reports and other non-binding documents that set guidelines on achieving progress through legislative and other measures addressing violence against women.[16] Some examples of the measures taken include the adoption of recommendation 2002 (5) on the protection of women against violence; the establishment in 2005 of the Task Force to Combat Violence against Women, including Domestic Violence; and engagement in campaigns, conferences and activities to raise awareness.[17] Based on the recommendation of the Task Force, in 2009 the Council decided to develop a binding legal instrument that would regulate prevention, protection and punishment in the area of violence against women, thereby addressing the gap in the regional human rights system. The Convention on Preventing and Combating Violence against Women and Domestic Violence was adopted in 2011 and came into effect in 2014.

30. The Convention addresses violence against women as a human rights violation and also as a form of gender-based discrimination, thereby strengthening the obligations imposed on States. The 81 articles in the Convention define the range of integrated legal and other measures that States are required to take in order to meet their obligations to prevent, protect and prosecute violence against women. Those measures include data collection, prevention, protection and support measures, as well as legislative, investigative and prosecutorial measures. The Convention also provides for the establishment of a monitoring mechanism to ensure State accountability.

31. The Convention requires States to adopt comprehensive and coordinated policies that place the rights of victims at the centre of all measures and to involve all relevant actors, including government agencies, national, regional and local authorities, civil society organizations and other relevant entities. In chapter II, the Convention explicitly calls for an integrated approach and requires the establishment of a dedicated governmental coordinating body to oversee the implementation of policies and measures, including disaggregated data collection. Other sections include chapter III, on the specific legislative, policy and other measures in the field of prevention; chapter IV, on protection and support issues; chapter V, on substantive law aspects; chapter VI, on investigation, prosecution, procedural law and protective measures; chapter VII, on migration and asylum issues; and chapter VIII, on international cooperation.

32. As regards prevention, States are required to put in place policies that are necessary to change attitudes and challenge gender roles and stereotypes that make violence against women acceptable; train professionals working with victims; raise awareness of the different forms of violence and their traumatizing nature;

[16] See Council of Europe, "Compilation of international legal instruments relevant to the Ad Hoc Committee on preventing and combating violence against women and domestic violence", available from www.coe.int/t/dghl/standardsetting/convention-violence/CAHVIO/compilation_en.pdf.

[17] See www.coe.int/t/dg2/equality/domesticviolencecampaign/Intro_Task_Force_EN.asp.

cooperate with non-governmental organizations, the media and the private sector; and reach out to the public. Regarding protection and support, States must ensure that the needs and safety of victims are placed at the centre of all measures and establish specialized support services to provide medical assistance as well as psychological and legal counselling for victims and their children; shelters in sufficient numbers; free telephone helplines; specialized support for victims of sexual violence; and reporting structures for professionals.

33. With respect to substantive law, States are required to provide for adequate civil remedies; ensure that all forms of violence against women and domestic violence are criminalized and appropriately punished; and recognize in law that being a family member or ex-spouse of a victim of violence against women and domestic violence is an aggravating circumstance that must be taken into consideration in the determination of the penalty. As regards investigation, prosecution and procedural aspects, States must ensure that all forms of violence against women and domestic violence are appropriately punished; ensure that culture, custom, religion or so-called honour are not accepted as justification for any act of violence; ensure that victims have access to special protection measures during investigation and judicial proceedings; implement risk assessment protocols to enhance the protection of victims; ensure that law enforcement agencies respond promptly to calls for assistance and that they manage dangerous situations adequately; and introduce preventive and protective legislation, including emergency barring orders.

34. Systematic and adequate data collection is recognized as an essential component of effective policymaking and a crucial requirement for monitoring the implementation of measures. The Convention specifies the type of data to be collected for dissemination, by the national coordinating body, to relevant monitoring bodies. Chapter IX of the Convention contains detailed provisions concerning the monitoring system necessary for the implementation of the Convention, both nationally and regionally. States parties cannot make reservations regarding the monitoring provisions. States parties are required to set up government bodies at the regional, national and local levels to coordinate, implement, monitor and evaluate relevant policies and measures.

35. The Convention provides for the creation of the Group of experts on action against violence against women and domestic violence. The Group of experts will have between 10 and 15 members, appointed in their individual capacity, and will report to the Committee of the Parties to the Convention. It will follow a report-based procedure in assessing the various measures a State party has taken and will take into account information submitted by the State and also by non-governmental organizations. It may organize country visits in instances where the information on a case is insufficient and there is no other feasible way of reliably gaining information. In certain circumstances, the Group of experts may request the urgent submission of a special report by the State party concerning measures to prevent a serious, massive or persistent pattern of violation of the provisions of the Convention or request a visit to the country concerned.

36. In accordance with the Convention, national parliaments are to be invited to participate in the monitoring of the Convention and States parties are to submit the Group of experts reports to their respective parliaments for consideration. The Parliamentary Assembly of the Council of Europe is also mandated to assess the implementation of the Convention.

37. The Committee of the Parties may adopt, on the basis of the conclusions of the Group of experts, recommendations on the measures to be taken by the State party concerned. In accordance with the Convention, the Group of experts may also adopt general recommendations that are not country-specific. These interpretative recommendations will not be legally binding, but can provide guidance on a clearer understanding and more effective implementation of the Convention.

38. One concern raised by researchers is that the Convention clearly sets apart domestic violence as distinct from violence against women. It is argued that the Convention simultaneously positions domestic violence as a gender-neutral phenomenon, while acknowledging that domestic violence disproportionally affects women. It is also argued that this is a departure from the Council of Europe's earlier recognition of the gender-based nature of domestic violence and that it contradicts accepted international understandings of gender-based violence.[18]

39. The Convention for the Protection of Human Rights and Fundamental Freedoms reflects Western European standards and morals as applicable to the European context. It entered into force on 3 September 1953. The Convention lists both substantive and ancillary rights, including the right to an effective remedy and the prohibition of discrimination. Subsequent amending protocols guarantee a number of other rights, including the right of equality between spouses (see Protocol No. 7, art. 5) and the general right not to suffer discrimination (see Protocol No. 12, art. 1).

40. During the negotiations on the Convention, it was decided to establish both a European Court of Human Rights and a European Commission of Human Rights.[19] The Commission, which was in operation from 1953 to 1999, largely performed two functions, namely, shielding the Court from a possible overload of individual complaints and serving as a regional institution directly accessible to individuals.[20] It filtered complaints through admissibility proceedings, mediated disputes through friendly settlement and carried out fact-finding activities and drew up reports in respect of disputes that had been declared admissible but were not settled. Pursuant to Protocol No. 11, the European Court of Human Rights took over the functions of the Commission.

41. The European Court of Human Rights was constituted in 1959. The judgements of the Court are transmitted to the Committee of Ministers, which is responsible for the supervision of their execution.[21] The Court has stated that its role in promoting and protecting human rights is subsidiary and supervisory, given that the main responsibility to protect human rights lies with the contracting States. Its decisions generally reflect the view that the Convention should be interpreted in a dynamic manner that takes into consideration commonly accepted standards in national laws of European States. In the absence of a European consensus, the national law is reflected through the application of a margin of appreciation doctrine, which allows for a measure of discretion in legislative, administrative or judicial action taken by States, thereby accommodating variations in State practices.

---

[18] René Römkens and Fleur van Leeuwen, research paper (on file with author).

[19] See Council of Europe, *Collected Edition of the "Travaux Preparatoires" of the European Convention on Human Rights*, vol. I.

[20] See Mark W. Janis, Richard S. Kay and Anthony W. Bradley, *European Human Rights Law: Text and Materials* (Oxford, Oxford University Press, 2008).

[21] European Convention on Human Rights, art. 46 (2).

This may result in the Court refraining from interpretative rulings that are too strict, in the light of the absence of moral and/or legal consensus across member States. The doctrine has been criticized for undermining the universal nature of human rights and introducing an unwarranted level of flexibility into the Convention. Proponents, on the other hand, hold that the doctrine recognizes the reality of the existence of differences in cultural and political standards in European States.

42. The Court has addressed cases of domestic violence, rape, honour-based violence, female genital mutilation, inhuman treatment in detention, violence in public places, servitude, forced sterilization and abortion-related violence. Most cases involve violence that has already taken place, with the exception of cases of honour-based violence and female genital mutilation that deal with the right to non-refoulement, that is, with preventing the actual act of violence from occurring. Article 2 (right to life), article 3 (prohibition of torture), article 8 (right to respect for private and family life), article 13 (right to an effective remedy) and article 14 (prohibition of discrimination) are relevant to cases of violence against women. However, complaints concerning violence against women are usually discussed under broad themes of whether the incidents constitute a violation of article 8, whether the violence reaches a certain threshold of severity under article 2 and whether the violence amounts to torture or inhuman or degrading treatment under article 3. The Court has often discussed cases of violence against women solely under article 8 and has refrained from considering the relevance of other articles.

43. The jurisprudence of the Court reflects the view that while the essential object of article 8 is to protect the individual against arbitrary action by public authorities, there may be positive obligations that may involve the adoption of measures in the sphere of the relations of individuals.[22] Thus, in some cases, the Court has formulated obligations for States parties that necessitate them to act, rather than only refrain from interference. This practice is often reflected in cases that deal with violence against women as violations under article 2 and article 8.[23] The Court considers the provision of access to justice for women victims of violence to be an obligation of States parties and includes under that obligation the provision of a legal framework criminalizing acts of violence against women; a regulatory framework of adjudicatory and enforcement machinery protecting individuals' rights;[24] legal aid;[25] and a procedural framework to enforce rights when government authorities fail to take action.[26] The Court has held that the Convention requires effective investigation into and prosecution of cases of violence against women and penalization of perpetrators, without undue delay,[27] given that lengthy delays have an impact on the effectiveness of the sentence and minimize the deterrent effect that prosecutions are meant to have.[28] The positive obligation to prevent violence

[22] See for example *Airey v. Ireland* (1979); *X and Y v. The Netherlands* (1985); *Bevacqua and S. v. Bulgaria* (2008); *A. v. Croatia* (2010); *Kalucza v. Hungary* (2012).

[23] See *Osman v. United Kingdom* (1998); *Tomasic and Others v. Croatia* (2009); *Opuz v. Turkey* (2009); *Kontrova v. Slovakia* (2007); *Bevacqua and S. v. Bulgaria* (2008); *A. v. Croatia* (2010); *Hajduova v. Slovakia* (2010); *Ebcin v. Turkey* (2011); *Kalucza v. Hungary* (2012); *M.C. v. Bulgaria* (2003); *Siliadin v. France* (2005).

[24] *A., B. and C. v. Ireland* (2010).

[25] *Airey v. Ireland* (1979).

[26] *Tysiac v. Poland* (2007).

[27] *M.C. v. Bulgaria* (2003); *Kontrova v. Slovakia* (2007); *Bevacqua and S. v. Bulgaria* (2008); *Opuz v. Turkey* (2009); *Kalucza v. Hungary* (2012).

[28] *Ebcin v. Turkey* (2011).

extends in appropriate circumstances to requiring the authorities to take preventive operational measures to protect an individual from the criminal acts of another individual.[29]

44. The Court does not usually refer to the term "due diligence" in respect of cases involving violence against women. In *Ebcin v. Turkey*, the Court reiterated that due diligence is implicitly required by the obligation to conduct investigations. However, when the Court establishes that the domestic authorities knew or ought to have known of the existence of a real and immediate risk, it then examines whether the authorities displayed due diligence to prevent violence against the victim.[30] The Court has noted that the scope of the positive obligation must be interpreted in a way that does not impose an impossible or disproportionate burden on the authorities and that it does not apply to every alleged risk to life.[31]

45. Except in one case,[32] the Court has failed to recognize discrimination against women as one of the causes of violence against women and it has not considered it necessary to examine the complaints under other provisions of the Convention, including article 14. Another critique of the Court's jurisprudence points to inconsistency in rulings, similarities in facts and circumstances notwithstanding. One example is the different rulings in the *Opuz v. Turkey* and *A. v. Croatia* cases in respect of the interpretation of available statistical evidence regarding domestic violence as disproportionately affecting women.[33] Also, although reference to non-discrimination and due diligence is made in a few cases, it is only in the Opuz case that the Court provides any insight into the scope of such obligations. It is the only domestic violence case in which the Court references numerous international and regional human rights instruments and emphasizes the binding nature of the Convention on the Elimination of All Forms of Discrimination against Women and the mutual applicability of the international and regional standards. Unfortunately, the Court has not cited international instruments in subsequent gender violence cases. It has subsequently referenced the Convention on the Elimination of All Forms of Discrimination against Women in only two cases: one involving forced sterilization (*V.C. v. Slovakia*, 2011) and one relating to the legal right to an abortion (*R.R. v. Poland*, 2011).

46. In the absence of an effective enforcement mechanism, implementation of the Court's rulings remains weak in various member States. A further challenge facing the Court is that of an increased caseload, which may lead to the prioritization of cases to the detriment of cases of violence against women.

E. Inter-American human rights system

47. The inter-American human rights system was created in 1948 and functions within the framework of the Organization of American States (OAS), with primary areas of focus including democracy, human rights, security and development. Normative developments include the adoption in 1948 of the American Declaration of the Rights and Duties of Man and the Charter of the Organization of American

[29] *Kontrova v. Slovakia* (2007); *Tomasic and Others v. Croatia* (2009); *Opuz v. Turkey* (2009).
[30] *Opuz v. Turkey* (2009).
[31] *Kontrova v. Slovakia* (2007); *Tomasic and Others v. Croatia* (2009); *Opuz v. Turkey* (2009).
[32] *Opuz v. Turkey* (2009).
[33] *Opuz v. Turkey* (2009); *A. v. Croatia* (2010).

States. The Declaration recognizes a range of civil, political, economic, social and cultural rights, including the right to life (art. I); the right of women, during pregnancy and the nursing period, and children to special protection, care and aid (art. VII); the right to the preservation of one's health and well-being (art. XI); the right to education (art. XII); the right to take part in cultural life and benefit from intellectual progress (art. XIII); the right to work and to fair remuneration (art. XIV); and the right to social security (art. XVI). The Charter refers to human rights in several of its provisions, including article 3 (l) on the fundamental rights of the individual without distinction as to race, nationality, creed or sex. Article 17 provides: "Each State has the right to develop its cultural, political, and economic life freely and naturally. In this free development, the State shall respect the rights of the individual and the principles of universal morality." Article 106 provided for the creation of the Inter-American Commission on Human Rights as a consultative mechanism for the promotion and protection of human rights.

48. The American Convention on Human Rights, adopted in 1969, is the main governing treaty of the inter-American human rights system. Part I includes a list of civil, political, economic, social and cultural rights that States are obligated to respect and guarantee, free from any form of discrimination. Article 1 (1) establishes the general obligation of States to respect and ensure the rights established in the Convention, without any discrimination on various grounds, including sex. Article 2 requires States to adopt legislative and other measures to give effect to rights. Also fundamental to protecting the right of women to live free from violence are the provisions on judicial protection and due guarantees contained in articles 8 (1) and 25; on the right to humane treatment and to integrity of the person (art. 5); on the right to privacy, respect for one's honour and recognition of one's dignity (art. 11); and on the right to life (art. 4). Equality before the law and equal protection guarantees are found in article 24, while article 17 recognizes the equality of rights of spouses during marriage, and in the event of its dissolution, and the general right to protection of the family. State obligations regarding the problem of violence against women include the duty to act with due diligence in responding to this human rights violation and the obligation to ensure adequate and effective access to justice. [34] Part II of the Convention establishes the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights as the competent monitoring organs.

49. The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará), adopted in 1994, is the most ratified instrument in the inter-American system. One feature of this Convention is its definition of violence against women as "any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere" (art. 1). The Convention expressly recognizes the relationship between gender violence and discrimination, indicating that such violence is a manifestation of historically unequal power relationships between women and men, and that women's right to a life free of violence includes the right to be free from all forms of discrimination and to be valued and educated free of, among others, stereotyped patterns of behaviour (preamble and art. 6). It establishes that violence affects women in multiple ways, impairing their exercise of other fundamental rights of a civil and

[34] See Inter-American Commission on Human Rights, *Access to Justice for Women Victims of Violence in the Americas* (Organization of American States, 2007).

political nature, as well as economic, social and cultural rights (art. 5). It provides that States parties must act with due diligence to prevent, investigate and impose penalties for violence against women (art. 7) whether occurring in the public or private spheres and whether perpetrated by individuals or State agents. It mandates that States must take special account of the situation of risk of violence that certain groups of women can face by reason of their race or ethnic background or their status as migrants, refugees or displaced persons; similar consideration is to be given to women who are pregnant, disabled, facing unfavourable economic conditions, affected by an armed conflict or deprived of their liberty (art. 9).

50. The Convention of Belém do Pará also recognizes the critical link between women's access to adequate judicial protection when denouncing acts of violence and the elimination of the problem of violence and the discrimination that perpetuates it. The States parties agree, in accordance with article 8, to gradually undertake specific measures, including programmes to develop training for all those involved in the administration of justice broadly; implement educational activities aimed at heightening the general public's awareness of the issue; modify social and cultural patterns of conduct and counteract prejudices, customs and other practices that legitimize or exacerbate violence against women; provide appropriate specialized services for women who have been subjected to violence; and ensure research and data collection relating to the causes, consequences and frequency of violence against women, in order to enable policy development and assess the effectiveness of relevant measures.

51. A mechanism was established in 2004 to follow up on the implementation of the Convention of Belém do Pará and address concerns related to non-compliance. It consists of two components, namely, the Conference of States Parties and the Committee of Experts. The mechanism is mandated to provide for the institutionalization of the political intent of the States, provide a consensus-based and independent system for the evaluation of progress in implementing the Convention, promote the implementation of the Convention and establish a system of technical cooperation among the States parties. The follow-up process comprises multilateral evaluation and follow-up rounds. During the multilateral evaluation round, the Committee of Experts analyses the implementation of the Convention, issues recommendations based on questionnaires completed by the States parties and prepares a hemispheric report. During the follow-up round, the Committee distributes an additional questionnaire to the States parties on the implementation of its specific recommendations. To date, 56 country reports, one follow-up report and two hemispheric reports have been published.

52. The Commission applied the Convention of Belém do Pará for the first time in the seminal case of *da Penha Maia Fernandes v. Brazil*; it held that the State had failed to act with the due diligence required to prevent, punish and eradicate domestic violence and found the State responsible for a violation in respect of not having convicted or punished the perpetrator over a period of 17 years.[35]

[35] See Inter-American Commission on Human Rights, *da Penha Maia Fernandes v. Brazil*, Case 12.051, Report No. 54/01 (2001).

53. Another regional treaty that is relevant is the Inter-American Convention to Prevent and Punish Torture (1985), owing to its influence in the conceptualization of rape as torture.[36]

54. Institutional mechanisms include both a commission and a court. The mandate of the Inter-American Commission on Human Rights includes receiving and investigating individual petitions relating to violations of human rights; observing the general situation of human rights in member States; conducting in loco visits to countries to conduct an in-depth analysis of the general situation and/or to investigate a specific situation; developing an awareness of human rights among the peoples of the Americas, including through the publication of reports on relevant thematic issues; organizing and holding visits, lectures, seminars and meetings with State and non-State actors; making recommendations to member States; requesting member States, in serious and urgent cases, to adopt precautionary measures, in order to prevent irreparable harm; presenting cases to the Inter-American Court of Human Rights; requesting advisory opinions of the Inter-American Court of Human Rights; and examining inter-State communications. The use of the precautionary measures mechanism has led to the Commission requesting a State party to adopt measures to protect the life and integrity of women's rights defenders in Colombia working with issues pertaining to the armed conflict; to protect the life, integrity and health of women living in displacement camps in Haiti; to ensure the safety of women's rights defenders in Mexico; and to protect victims of sexual abuse, among other urgent situations.

55. The Inter-American Court of Human Rights has both adjudicatory and advisory functions. In its adjudicatory function, the Court has the power to process cases submitted to it by either the Commission or States parties to the American Convention on Human Rights. The Court has issued numerous judgements on a range of human rights issues,[37] but not until recently has it addressed gender issues in its judgements, starting with the issue of sexual violence in its ruling in *Miguel Castro Castro Prison v. Peru*.[38] Post 2007, the individual petition system has led to an increase in cases on women's human rights submitted by the Commission to the Court. This has resulted in a series of judgements advancing important legal standards in the areas of discrimination and violence against women.[39] The Court can also adopt provisional measures in cases of extreme gravity and urgency and,

[36] See Inter-American Court of Human Rights, *Fernández Ortega et al. v. Mexico*, Preliminary Objections, Merits, Reparations and Costs, Judgement of 30 August 2010 and *Rosendo Cantú et al. v. Mexico*, Preliminary Objections, Merits, Reparations and Costs, Judgement of 31 August 2010.

[37] See www.corteidh.or.cr/casos.cfm.

[38] See Rosa M. Celorio, "The rights of women in the inter-American system of human rights: current opportunities and challenges in standard-setting", *University of Miami Law Review*, vol. 65, No. 3 (2011).

[39] See Inter-American Court of Human Rights, *González et al. ("Cotton Field") v. Mexico*, Preliminary Objection, Merits, Reparations and Costs, Judgement of 16 November 2009; *"Las Dos Erres" Massacre v. Guatemala* 2008, Preliminary Objection, Merits, Reparation, and Costs, Judgement of 24 November 2009; *Fernández Ortega v. Mexico*; *Rosendo Cantú et al. v. Mexico*; *Atala Riffo and Daughters v. Chile*, Merits, Reparations, and Costs, Judgement of 24 February 2012; *Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica*, Preliminary Objections, Merits, Reparations and Costs, Judgement of 28 November 2012; *Espinoza Gonzáles v. Perú*, Preliminary Objections, Merits, Reparations and Costs, Judgement of 20 November 2014; *J. v. Perú*, Preliminary Objection, Merits, Reparations and Costs, Judgement of 27 November 2013.

when necessary, to avoid irreparable damage.[40] As part of its advisory function, the Court can also issue advisory opinions regarding the interpretation of the American Convention on Human Rights and other regional treaties.[41] The advisory opinion mechanism of the Court has not yet been used to address women's rights issues. The Court has been responsive to receiving amicus briefs and these have helped to shape its legal analysis, including on the scope of States' obligations regarding non-discrimination.[42]

56. The Commission includes 35 country and 9 thematic rapporteurships. The Office of the Rapporteur on the Rights of Women was established in 1994 to review the extent to which the legislation and practices of States members of OAS that affect the rights of women comply with the general obligations of equality and non-discrimination enshrined in international and regional human rights instruments.[43] The Office has contributed to the development of jurisprudence and legal standards within the individual case system; supported the investigation of themes affecting the rights of women at the regional and national levels, including through in loco visits, and the publication of thematic and country reports; promoted the incorporation of a gender perspective throughout the institutional mechanisms of the inter-American system, focusing on the issues of violence, discrimination, due diligence and access to justice; provided motivation for the Commission to approve a number of merits, admissibility and friendly settlement reports concerning cases alleging human rights violations with gender-specific causes, and the litigation of seminal cases before the Court; and promoted the general observance of human rights obligations pertaining to gender equality and the rights of women at a more macro level throughout the Americas. Among the numerous thematic reports produced, "Access to Justice for Women Victims of Violence in the Americas" published in 2007 offers a comprehensive diagnosis of the main challenges women face when they try to access judicial resources and protection.

57. With regard to violence against women cases, merits decisions of the Commission and the jurisprudence of the Court have been influenced by the relevant international and regional instruments.[44] These rulings have generated legal standards addressing crucial issues applicable to the rights of women in key areas, including the right of women to live free from all forms of discrimination and violence; the obligation of States to act with due diligence; access to justice for women victims of discrimination and violence; the economic, social and cultural rights of women; and the reproductive rights of women. Some of the most important standards include the duty of States to exercise due diligence to prevent, promptly investigate and sanction all forms of violence against women committed by either State or non-State actors; the obligation to provide effective and impartial judicial avenues for victims of all forms of violence against women; the holding of rape as a

[40] For provisional measures granted, see www.corteidh.or.cr/medidas.cfm.

[41] For advisory opinions issued, see www.corteidh.or.cr/index.php/en/advisory-opinions.

[42] See *González et al. ("Cotton Field") v. Mexico*, and *Atala Riffo and Daughters v. Chile*.

[43] See www.oas.org/en/iachr/women/default.asp.

[44] See Inter-American Commission on Human Rights, *Legal Standards Related to Gender Equality and Women's Rights in the Inter-American Human Rights System: Development and Application* (2011), para. 16. See also cases of the Inter-American Commission on Human Rights: *Martín de Mejía v. Peru*, Case 10.970, Report No. 5/96 (1996); *Morales de Sierra v. Guatemala*, Case 11.625, Report No. 4/01 (2001); *González Pérez v. Mexico*, Case 11.565, Report No. 53/01 (2001); *da Penha Maia Fernandes v. Brazil*; *Lenahan (Gonzales) et al. v. United States*, Case 12.626, Report No. 80/11 (2011).

form of torture when it is committed by State agents; the obligation of States to take action to eradicate discrimination against women and stereotypical patterns of behaviour that promote their unequal treatment in their societies; and the recognition of multiple forms of discrimination and violence that indigenous women can suffer based on grounds of sex, race, ethnicity and economic position. Most of the Commission's recommendations have traditionally centred on the following themes: violence, the duty to act with due diligence, access to justice, and the different facets of discrimination, including its structural, systemic and intersectional nature.[45]

58. *González et al. ("Cotton Field") v. Mexico* is considered a landmark judgement in the area of violence against women.[46] It was held that the State had failed to act with the due diligence required to protect the victims' rights to life, to humane treatment, to personal liberty and to be free from violence and also had failed to conduct an adequate and effective investigation into the victims' disappearances and homicides. The Court emphasized the State's duty to act with due diligence and provided a comprehensive analysis on the content of the duties to prevent, investigate and offer reparations in such kinds of cases. It underscored that although the obligation to prevent acts of violence is an obligation of means and not results, the duty is comprehensive and encompasses the adoption of legal, public policy and institutional measures designed to prevent such acts and to protect women from risks that increase their exposure to violence. Also, for the first time, the Court established that a prompt, serious, impartial and exhaustive investigation of human rights violations has a wider scope in the case of murder or ill-treatment of a woman, or where a woman's personal liberty is affected, in the context of known and widespread violence against women. The judgement also marks the first time that the Court addressed what reparations should be from a gender perspective, for victims of acts of discrimination and violence against women, with respect to satisfaction, rehabilitation, guarantees of non-repetition, rectification and compensation. The Court also underscored the link between the duty to act with due diligence and the obligations of States to guarantee access to adequate and effective judicial remedies for victims and their family members.

59. Decisions, including in the da Penha Maia Fernandes, González et al. ("Cotton Field"), Lenahan (Gonzales) et al. and Veliz Franco cases, reflect a continuum of positive developments with respect to the issues of discrimination and violence against women and also reflect the precedents set by the universal and regional human rights protection systems. The broad range of mechanisms that are applied by the Commission to address violence against women are also increasingly creating spaces for the participation of victims and civil society organizations in the development of legal standards related to violence against women.

60. The challenges faced by the Commission and the Court, including with respect to how to strengthen the workings of this regional human rights system, are

[45] See cases of the Inter-American Court of Human Rights: *Fernández Ortega et al. v. Mexico*, para. 4; *Rosendo Cantú et al. v. Mexico*, paras. 3 and 4; *Atala Riffo and Daughters v. Chile*; *Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica*, including the Inter-American Commission on Human Rights Report on Merits No. 85/10 (14 July 2010).

[46] Rosa M. Celorio, "Inter-American Court of Human Rights: *Gonzalez ("Cotton Field") v. Mexico*", *International Legal Materials*, vol. 49, No. 3 (2010); Rosa M. Celorio, "The rights of women in the inter-American system of human rights: current opportunities and challenges in standard-setting", *University of Miami Law Review*, vol. 65, No. 3 (2011).

currently under discussion. Other challenges include financial and human resource constraints; institutional delays in the processing of individual case petitions and precautionary measures; and the need to more broadly disseminate knowledge and build capacity on the legal standards established by the inter-American system. Also under discussion are challenges with respect to acknowledging the criticisms and meeting the expectations of civil society on the need for more progressive legal standards related to violence against women and improving the system of follow-up to decisions and recommendations.

IV. Conclusions and recommendations

61. As noted above, the three regional human rights systems have developed legally binding instruments and have set up mechanisms to address women's human rights broadly, and in the case of the European and inter-American systems, specific instruments have been adopted to address the issue of violence against women. These systems have been developed based on regional needs and understandings and on lessons learned from the international system and from each of the regional systems themselves. Unfortunately, the lack of, or minimal, development within other regions of the world on legally binding normative frameworks on women's human rights and violence against women is a source of concern.

62. The limitations of the international system, including the lack of a legally binding specific instrument on violence against women, serve to weaken the aspiration of the General Assembly and the Human Rights Council that regional arrangements should reinforce universal human rights standards, as contained in international human rights instruments. The current norms and standards within the United Nations system emanate from soft law developments and are of persuasive value, but are not legally binding.

63. In previous reports, the Special Rapporteur has expressed her concern about the current practice of "normativity without legality" in the United Nations, as reflected in the endorsement of principles by States, through resolutions and declarations, but without the development and adoption of a dedicated, specific binding legal framework that establishes all forms of violence against women as a specific, grave and widespread human rights violation. The limited and indirect addressing of violence against women as a form of discrimination that falls under the interpretation of the Convention on the Elimination of All Forms of Discrimination against Women as reflected in general recommendation No. 19 is of persuasive value, but is not legally binding. The present report highlights that the addressing of violence against women as a human rights violation, in and of itself, is reflected only in the three regional legally binding instruments discussed above.

64. The Special Rapporteur has participated in numerous meetings and discussions on the subject of the normative gap in international law in respect of violence against women (see A/HRC/29/27/Add.5). The submissions received from organizations and individuals indicate the need for deeper discussions at the United Nations level. The interactive dialogue at the Human Rights Council session in June 2015 provided an opportunity for questions and comments from member States on the issue. Broadly, the opinions expressed include the

following: there is sufficient and applicable international law in existence and thus the focus should rather be on developing strategies and action plans for the implementation of laws at the national level; and a new instrument introduces the risk of duplication with the Convention on the Elimination of All Forms of Discrimination against Women and the regional instruments on violence against women. Support was expressed for a new legally binding instrument, without any reservations, and views were expressed that the idea deserved further consideration and discussion by member States. The conclusion of the Special Rapporteur is that despite the broad norms relating to respect for and the protection and fulfilment of human rights, within an equality and non-discrimination framework, member States have accepted the need to adopt 10 specific treaties since the Universal Declaration of Human Rights came into existence. This is a reflection of the understanding and acceptance of the importance of specificity with respect to certain human rights issues. Unfortunately, when the Convention on the Elimination of All Forms of Discrimination against Women was drafted, the need for specific provisions on violence against women and girls was not considered. It is time to now consider addressing this normative gap regarding a pervasive and widespread human rights violation. The inter-American and the European conventions on violence against women provide a starting point for a global discussion on the development of an instrument that would have universal applicability.

65. Providing an historical perspective and avoiding the loss of institutionalized memory regarding past efforts to address the normative gap is imperative in the light of past and current attempts to silence and stifle discussions on this issue. The lack of discussion, documentation and acknowledgement of an historical yet seminal United Nations expert group meeting that was held in 1991 in Vienna is a source of concern. The meeting was devoted to discussions on the development of a specific instrument on violence against women, with the Government of Canada presenting a working paper entitled "Issues in the development of an international instrument on violence against women" (1991). In the working paper, there is an acknowledgement of the limited applicability of existing international treaties to violence against women. The rationale of the Government of Canada for proposing a treaty dealing with violence against women was that "there are currently no international instruments that deal with this issue in an express and comprehensive fashion".[47] The only document from the expert group meeting that the Special Rapporteur had access to is a submission reacting to the idea of a draft treaty as proposed by the Government of Canada. The Special Rapporteur has been unsuccessful in obtaining other documents, despite approaching relevant United Nations agencies and participants that were at the expert group meeting.

66. The concerns raised more than 20 years ago and further highlighted by the Special Rapporteur in her reports reinforce the view that it is time to consider the development and adoption of a binding international instrument on violence against women and girls. Such an instrument should ensure that

[47] Andrew Byrnes, "Observations on the background paper prepared by the Government of Canada on issues in the development of an international instrument on violence against women". Paper prepared for the Expert Group Meeting on Violence against Women, 11-15 Nov. 1991, Vienna (para. 2).

States are held accountable to standards that are legally binding, provide a clear normative framework for the protection of women and girls globally and have a specific monitoring body to substantively provide in-depth analysis of both general and country-level developments. With a legally binding instrument, a protective, preventive and educative framework could be established to reaffirm the commitment of the international community to its articulation that women's rights are human rights and that violence against women is a human rights violation in and of itself.

67. **Closing the normative gap requires the international legalization of women's right to be free of all forms of violence, whether public or private. An international human rights law that explicitly articulates legal obligations in the protection of dignity, freedom, safety, security and equality rights for women will result in legal obligations, thereby providing for international scrutiny and accountability through a dedicated monitoring body. This will lead to positive consequences in domestic human rights practices in respect of protection, prevention and accountability for all manifestations of violence against women and girls.**